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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



FILE: EAC 01 076 54088 Office: VERMONT SERVICE CENTER Date: **NOV 20 2003**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

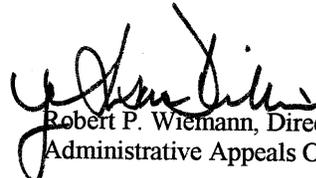
ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as being a publisher serving risk management and derivatives markets. It seeks to extend the beneficiary's stay in the United States as a North American sales executive. The director determined that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in an executive or managerial capacity.

On appeal, counsel disagrees with the director's determination and asserts that the director's decision was "arbitrary, capricious and erroneous."

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

According to the documentary evidence contained in the record, the petitioner was incorporated in 1999 as a publisher serving risk management and derivatives markets. The record reflects that the U.S. entity is a subsidiary of [REDACTED] Limited, located in England. The petitioner declares 200 employees worldwide and \$2,532,812 in gross annual income. The petitioner seeks to continue the use of the beneficiary's services as a sales executive for a period of three years, at a yearly salary of \$41,000.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;

- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a letter dated January 3, 2001 counsel states the following:

BENEFICIARY WITHIN THE THREE YEARS PRIOR TO HER TRANSFER TO THE US WAS EMPLOYED ABROAD FOR ONE CONTINUOUS YEAR BY THAT QUALIFYING ORGANIZATION IN A MANAGERIAL CAPACITY.

[The beneficiary] was continuously employed by [REDACTED] (subsequently acquired by [REDACTED] in London from July 1997 to January 1999 as a Marketing and Sales Executive.

[The beneficiary] was solely responsible for generating new subscriptions throughout the European region for seven newsletters that provided chief executives and decision makers, in both vendor and user firms, with key technological information for the financial market. In addition, she directed sales at the Waters Information Services booth at European exhibitions.

BENEFICIARY WILL CONTINUE TO BE EMPLOYED BY PETITIONER IN A MANAGERIAL POSITION.

[The beneficiary's] continued employment as North American Sales Executive by Petitioner will entail utilization of her management skills as well as her knowledge of the culture and products of Risk Waters Group, Inc. In her capacity as the company's North American Sales Executive, [the beneficiary] will continue to be solely responsible for generating new and repeat subscriptions for the company's seven newsletters throughout North America and Canada.

In the petition, the petitioner states that the beneficiary has in the past three years been responsible for generating new and repeat subscriptions for the company's seven newsletters throughout North America and Canada. The petitioner continues by stating that the beneficiary, in working for the U.S. entity,

will be responsible for generating new and repeat subscriptions for the company's seven newsletters throughout North America and Canada. The petitioner further maintains that the beneficiary will work with financial companies assessing which newsletter would be most relevant and financially beneficial to individuals within its organization.

A copy of the beneficiary's resume was also submitted in support of the petitioner's intracompany transferee claim. According to the evidence submitted, the beneficiary received a Bachelor of Arts degree in leisure studies. The beneficiary has more than six years of experience in the field. Her areas of expertise include sales techniques, communication skills, promotions, account management, client relations, marketing analysis, business-to-business sales, writing/editing, negotiation, event management, organization, and administration. Her work experience includes a position as US newsletter sales for Risk Information Services from 1999 to 2000; US newsletter sales for Waters Information Services from 1998-1999; European newsletter sales for Waters Information Services, London, England from 1997 to 1998; account manager for TG Scott & Sons from 1995 to 1998; advertisement sales for Hurst Publishing from 1994 to 1995; and assistant promotions manager for The Ritzy Nightclub from 1993 to 1994.

In a letter dated January 5, 2000, Steve Clifford, secretary of the Risk Waters Group in England describes the beneficiary's duties as generating new and repeat subscriptions, working with financial companies to assess which newsletter would be most relevant and financially beneficial to individuals within its organization, and consulting with subscribers to assure that the chosen newsletter still meets with the business and financial needs of the companies.

In response to the director's request for additional evidence counsel states that the beneficiary is and will be employed in the capacity of a functional manager. She goes on to state that the beneficiary, in this capacity, manages the sales and distribution function of the company's specialist financial newsletters, she exercises independent judgment and has broad discretionary decision making authority over all day-to-day operations in connection with the function that she manages.

In a letter dated February 26, 2001 the secretary of Risk Waters Group in England states that the beneficiary, in her role as sales executive for the U.S. entity, has been responsible for managing the sales and distribution function of the specialist financial newsletters; in that she has been responsible for

generating new and repeat subscriptions for the company. He continues by stating that the beneficiary works with financial companies, assessing which newsletter(s) would be most relevant and financially beneficial to individuals within their organization. He further maintains that the beneficiary exercises independent judgment and has broad discretionary decision making authority over all day-to-day operations in connection with the function that she manages.

In his decision dated May 25, 2001, the director stated that in light of the evidence contained in the record, the beneficiary's prior LIA petition was approved in error. He further maintains that the record does not establish that the beneficiary has been and will be employed in either a managerial or executive capacity.

On appeal, counsel asserts that the director's decision was in error. In support of her contention, counsel resubmits the letter dated February 26, 2001 as evidence. Counsel states further that the director failed to consider the petitioner's request to amend the petition. According to counsel, when responding to the director's request for evidence, the petitioner asked the director to consider the beneficiary an employee in a specialized knowledge capacity.

On review, the record as presently constituted is not persuasive in demonstrating that the petitioner has been or will be performing her duties in a managerial or executive capacity. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as being responsible for managing the sales and distribution function of the specialist financial newsletters, generating new and repeat subscriptions for the company, assessing which newsletters would be most relevant and financially beneficial to subscribers, generating and managing new and repeat business, and selling high value items to senior level personnel are without any context in which to reach a determination as to whether they would be qualifying as executive or managerial in nature.

Moreover, the petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that she will be directing the management of the organization or a major component or function of the organization, that she will be establishing goals and policies, or that she will be exercising a wide latitude in discretionary decision-making. There is no

evidence submitted to show the number of hours attributed to each of the beneficiary's duties. The petitioner claims that the beneficiary will be managing the sales and distribution function of the specialist financial newsletters. However, rather than managing a major department, subdivision, function, or component of the organization, it appears that she will actually be performing the services associated with selling and distributing the newsletter. As case law confirms, an employee who primarily performs the tasks necessary to produce a product or to provide a service is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve her from performing non-qualifying duties. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. In conclusion, the petitioner has failed to demonstrate that the beneficiary has been employed abroad or will be employed in the United States in a qualifying managerial or executive capacity. Therefore, the beneficiary is ineligible for classification under section 101(a)(15)(L) of the Act. Consequently, the appeal will be dismissed.

The AAO now turns to counsel's statement on appeal concerning the petitioner's request for a change in the beneficiary's classification from an L-1A intercompany transferee (manager/executive) to an L-1B intracompany transferee (an employee with specialized knowledge). According to counsel, the petitioner requested this change in response to the director's request for additional evidence.

Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). If the petitioner believed that the beneficiary was eligible for this nonimmigrant visa classification as an employee who possessed specialized knowledge, the petitioner was required to request such classification when filing the petition. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). The petitioner cannot request such a change now on appeal. The AAO notes that, if the petitioner wishes to seek classification of the beneficiary as an L-1B intracompany transferee, the

petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.